

Remarks:

Claims 1, 2, 4, 7-20, 24-29, 32-34, 37, and 38 were pending. With this amendment, claims 1, 2, 4, 7-11, 13-20, 24-29, 32-34, and 37-39 are pending in this application. Claims 14-20, 24-29, 32-34, 37, and 38 are withdrawn.

Claims 1 and 13 are currently amended, and claim 39 is new. The amendments are supported throughout the original specification, for example, at page 7, lines 1-3 of the substitute specification. New claim 39 is supported throughout the original specification, for example, at page 14, lines 26-28 of the substitute specification. Claim 12 is cancelled without prejudice or disclaimer of the subject matter thereof. No new matter has been added.

Rejections under 35 U.S.C. § 103

Claims 1, 2, 4, and 7-11 stand rejected under 35 U.S.C. § 103 as obvious over WO 90/15828 (Dahl) in view of U.S. Patent No. 1,936,994 (Rice). Claims 12 and 13 stand rejected as obvious over Dahl in view of Rice and U.S. Patent No. 4,353,961 (Gotcher). Applicants respectfully traverse these rejections for the reasons presented herein.

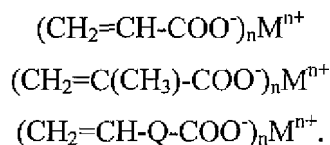
Rejections of Claims 1, 2, 4, and 7-11

Claim 1 is currently amended to incorporate the subject matter of claim 12. Namely, claim 1 now specifies that the fluoropolymer comprises a poly(vinylidene fluoride) (PVDF) homopolymer or copolymer. Because claim 12 was not rejected over Dahl in view of Rice, the rejection of claims 1, 2, 4, and 7-11 over Dahl in view of Rice should be withdrawn as moot. Claim 1 will be addressed below over the prior rejection of claim 12.

Rejections of Claims 12 and 13

Claims 12 and 13 stand rejected as obvious over Dahl in view of Rice and Gotcher. As noted above, claim 1 is currently amended to incorporate the subject

matter of claim 12. Applicants respectfully submit that a *prima facie* case of obviousness has not been shown because Dahl, Rice, and Gotcher, alone or in any reasonable combination, fail to disclose or suggest melt blending the fluoropolymer comprising a poly(vinylidene fluoride) (PVDF) homopolymer or copolymer with a compound containing a single C=C double bond and at least one polar functional group that is not a carboxylic acid salt functional group, and a stabilizer of at least one graftable metal salt having one of the following formulae:



“To establish a *prima facie* case of obviousness, ... the prior art reference (or references when combined) must teach or suggest all the claim limitations.” M.P.E.P. §2143. Additionally, as set forth by the Supreme Court in KSR Int’l Co. v. Teleflex, Inc., 550 U.S. 398 (2007), it is necessary to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the prior art elements in the manner claimed.

Dahl fails to disclose or suggest a fluoropolymer comprising a poly(vinylidene fluoride) (PVDF) homopolymer or copolymer. Dahl is directed to a graft radiation method for forming a fluoropolymer ionomer by adding grafting monomer to a fluoropolymer and irradiating. The fluoropolymers of Dahl are thermoplastic fluoropolymers such as ethylene-tetrafluoroethylene (ETFE). As recognized in the Office Action, Dahl fails to teach the fluoropolymer is PVDF. Office Action page 5.

Rice also fails to disclose or suggest a fluoropolymer comprising a poly(vinylidene fluoride) (PVDF) homopolymer or copolymer. Rice is directed to rubber (creamed latex) compositions. There is no teaching or suggestion in Rice to use a fluoropolymer comprising a poly(vinylidene fluoride) (PVDF) homopolymer or copolymer. Accordingly, Rice fails to remedy the deficiencies of Dahl.

The Office Action relies on Gotcher for allegedly showing that ETFE and PVDF are functional equivalents. Applicants respectfully disagree. Gotcher is directed to melt-processable fluorocarbon polymer compositions and a process to form shaped articles therefrom. Gotcher lists a number of suitable fluorocarbon polymers including, *for example*:

homopolymers, copolymers, and terpolymers such as ethylene-tetrafluoroethylene copolymers (ETFE polymers), ethylene-chlorotrifluoroethylene copolymers, vinylidene fluoride homopolymers, tetrafluoroethylene-vinylidene fluoride copolymers, tetrafluoroethylenehexafluoropropylene copolymers, vinylidene fluoride-hexafluoropropylene copolymers, vinylidene fluoride hexafluoroisobutylene copolymers, vinylidene fluoride-hexafluoropropylene tetrafluoroethylene terpolymers and mixtures of any of the above. Col. 2, line 63 to col. 3, line 6 of Gotcher.

The fact that a claimed species or subgenus is encompassed by a prior art genus is not sufficient by itself to establish a *prima facie* case of obviousness. *In re Baird*, 16 F.3d 380, 382, 29 USPQ2d 1550, 1552 (Fed. Cir. 1994); *In re Jones*, 958 F.2d 347, 350, 21 USPQ2d 1941, 1943 (Fed. Cir. 1992); and M.P.E.P. § 2144.08. Moreover, in order to rely on equivalence as a rationale supporting an obviousness rejection, the equivalency must be recognized in the prior art. *In re Ruff*, 256 F.2d 590 (CCPA 1958). There is nothing provided in Gotcher to suggest that all of the fluorocarbon polymers listed are equivalent. Gotcher merely lists examples of suitable fluorocarbon polymers "which may advantageously be utilized in the described process." Col. 2, lines 64-65 of Gotcher. There is nothing to suggest that they are functional equivalents or that they would be interchangeable in any process or formulation. Thus, there is no recognition by Gotcher of equivalency, which would support a finding of *prima facie* obviousness. As a *prima facie* obviousness has not been shown, it is respectfully submitted that independent claim 1 is in condition for allowance. Claims 2, 4, 7-11 and 13 depend, directly or indirectly, from claim 1 and therefore should each be allowed for at least the reasons set forth above.

Additionally, Applicants respectfully submit that the reasons given for

combining the references is insufficient. The Office alleges: "Gotcher et al. teaches that ETFE and PVDF are functional equivalents for the purpose of producing melt-processable fluoropolymers for wire coatings." Office Action, page 5. A mere statement that "the claimed invention would have been 'well within the ordinary skill of the art' at the time the claimed invention was made" ... is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teaching of the references." *Ex parte Levengood*, 28 U.S.P.Q.2d 1300 (Bd. Pat. App. & Inter. 1993). See also *KSR* and M.P.E.P. 2143.01(IV).

Here, it appears that the only reason provided by the Office is a purpose of producing melt-processable fluoropolymers for wire coatings. Applicant submits that this rationale is insufficient and the Office has failed to expressly articulate the underlying analysis supporting the proffered "apparent reason." As the conclusory reason provided is insufficient, Applicant respectfully submits that the Office has also not met its burden in this regard as well. Accordingly, it is respectfully submitted that claim 1 is allowable, and claims 2, 4, 7-11 and 13, which depend from claim 1, should be allowable as dependent thereon.

### **Conclusion**

For all of the foregoing reasons, Applicants respectfully request reconsideration and allowance of the claims. Applicants invite the examiner to contact their undersigned representative if it appears that this may expedite examination.

Respectfully submitted,

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